

# QUID NOVI

***Université McGill,  
Faculté de Droit  
Volume 31, no. 9  
12 janvier 2010***

***McGill University,  
Faculty of Law  
Volume 31, no. 9  
January 12th, 2010***





## QUID NOVI

3661 Peel Street  
Montréal, Québec  
H2A 1X1  
(514) 398-4430  
[www.law.mcgill.ca/quid](http://www.law.mcgill.ca/quid)

### Editors-in-Chief

Courtney Retter  
Chanel Sterie

### In-House Diva

Charlie Feldman

### Webmaster

Ryan Schwartz

### Layout Editors

James Nowlan  
Lexi Pace

### Associate Editors

Stefanie Carsley  
Eliza Cohen  
Michelle Felsky  
Andrea Girardin  
Faizel Gulamhussein  
Daniel Haboucha  
Allison Jaskolka  
Bonnie King  
Ilya Kirtsman  
Mathieu Kissin  
Marie-Pier Leduc  
Carrie Levitt  
Corey Omer  
Evan Paperman  
Brett Pedvis  
David Rapps  
Christina Sauro  
Laura Schelm  
Nikita Stepin  
Lucinda Tang  
Eva Warden  
Randee Zeltz  
Krista Zeman

### Staff Writers

Chase Bartlett  
Kirk Emery  
Andrea Girardin  
Michael Shortt  
Marc Tacheji

## IN THIS ISSUE...

3. A New Year
5. Film Review
6. CDO
6. Legal Frontiers
- 7-8. LSA Events
9. Innocence McGill
10. Getting Involved
10. Library
11. Law School of Rock
12. Truth Stranger than Fiction
13. A Brilliant Idea
14. Droit à l'image
16. Hats Off!
18. La vérité de la civilisation

## I Need A Hero by Courtney Retter (LAW II)

I have begun 2010 with the unsettling recognition that I am not entirely sure who my heroes are. The catalyst for my realization: a Rosh Hashanah sermon inclusive of the lamentations of a Rabbi disheartened by the fact that young people are more likely to form a spiritual relationship with an athlete than with God. While I do not consider myself to be a particularly religious person, the Rabbi's message resonated with me and found itself seeping into the pages of my holiday book of choice: Marie Phillips' novel, *Gods Behaving Badly*.

*Gods Behaving Badly* revolves around Ancient Greek deities who find themselves trading in their castle on Mt. Olympus for a dilapidated house in 21st century London and a world wherein the relevance of their powers is proving to be anachronistic. The reason for their waning powers is the modern-day community of mortals that no longer have faith in divine beings. This disturbing conclusion forces the Gods and Goddesses to use their traditional gifts in atypical ways: Artemis, for instance, Goddess of Hunting and the Moon, swaps her toga for a tracksuit and pursues a career as a dogwalker in a pathetic attempt to remain connected with animals. Apollo, by contrast, God of the Sun, utilizes his gift of prophecy as a television psychic in a bid to reclaim his

*continued on p. 21*

The *Quid Novi* is published weekly by the students of the Faculty of Law at McGill University.  
Production is made possible through the direct support of students.

All contents copyright 2010 *Quid Novi*.

Les opinions exprimées sont propres aux auteurs et ne reflètent pas nécessairement celles de l'équipe du *Quid Novi*.

The content of this publication does not necessarily reflect the views of the McGill Law Students' Association or of McGill University.

**Envoyez vos commentaires ou articles avant jeudi 5pm à l'adresse: [quid.law@mcgill.ca](mailto:quid.law@mcgill.ca)**

Toute contribution doit indiquer l'auteur et son origine et n'est publiée qu'à la discrétion du comité de rédaction, qui basera sa décision sur la politique de rédaction telle que décrite à l'adresse:  
<http://www.law.mcgill.ca/quid/epolicy/html>.

Contributions should preferably be submitted as a .doc attachment (**and not, for instance, a ".docx."**).  
Contributions should also include the **student year** of the contributor.



# A New Year, A Clear Path

by Alexandre Shee (Law III)

After a Quick first semester filled with a tremendous amount of learning and successes, the Law Student's Association is back. As should be tradition, I want to keep you up to date with our vision and direction, what has already been achieved, and finally those things that need to continue to be worked on.

The LSA has been successful so far this year in great part because of you. Many students have contributed ideas, suggestions and time to help make their Association more transparent, accountable and intuitive.

Student clubs have organized stimulating activities, with the help of your money, that have brought leaders from the broader community, helping infuse classroom debates with an ever deeper sense of understanding of contexts as well as motivated students to dig deeper and search for alternative solutions for current problems. These contributions have set a standard that I hope we can all continue to uphold.

As an umbrella association that should help student interactions and initiatives flourish, the LSA Executive will continue to strive to make the LSA better by prioritizing the Revising and Updating of the Current Constitution, continuing to develop Green Initiatives, Negotiating a Clear MoA concerning the Print Credit Fund, and Reevaluating our relationship with SSMU, among a host of other portfolio specific initiatives such as culturally sensitive activities, sporting activities, coffeehouses, art competitions, and trips.

## Constitutional Revision and Updating

The LSA constitution needs further revision and updating in line with the vision set out by the LSA executive of a more accountable and streamlined LSA. After a session of learning, it is time to not only use best practices, but to revisit certain structural problems that the LSA is faced with. This would be a positive step forward for students and the

representation they have. Moreover, it is time that this type of exercise be done for the whole of the document in order to balance its content. So, upon the future approbation of LSA council, a constitutional committee will be created with the mandate of revising and updating our current constitution by the end of this term. It is time for action now.

## Green Initiatives

The LSA has appointed two green commissioners with distinct mandates to create initiatives both for this year and the next five. A group of individuals have been working with them in order to advance ideas such as composting, sustainable dishware, and Green CoffeeHouses. Furthermore, new Green By-Laws have been introduced to LSA council in conjunction with a planned constitutional revision and update. These projects will allow students for the next five years to have a clear direction on green initiatives, making us a faculty at the forefront of a movement for sustainability.

## Negotiating A Clear MoA for the Print Credit Fund

Each time you print using the printer in the Atrium, you contribute to a joint McGill-LSA fund that should be used to enhance student life and help encourage student activities. Part of these funds were used during the summer to renovate the LSA office. However, there is no fixed agreement between the LSA and McGill concerning how these funds should be allocated in the future. It is time to establish a clear structure and allow more of these funds to be injected into student life and student initiatives.

## Reevaluating our relationship with SSMU

For too long has SSMU profited from law students without helping student life within our faculty. Having sat on SSMU council for a year and acquiring an intimate understanding of the pitfalls of our association with it, it is time to take a clear step in the right direction

by reevaluating our relationship. Students' money is being wasted in a machine that does not benefit our students. Furthermore, this is money that could be more beneficially be used for all students if it were given back. A committee will be set up in order to evaluate what should happen to this relationship and how to best act in the interest of students. Any binding decisions will be put directly to students allowing for a plebiscite to decide the future of our relationship. We have stood still too long faced with what has grown as taxing for students, who could put their money to better use.

La dernière session a été une importante réussite. Un premier budget présenté, une orientation impeccable, des activités unissant les étudiants ainsi que des élections sans controverse. En fait, cette première étape de notre mandat comme exécutif a servi d'apprentissage ainsi que de plateforme pour le lancement d'idées pour les années à venir. Plutôt que d'envisager la réussite du LSA à court terme, notre vision nous a tous amené à considérer la création de traditions qui pourraient continuer dans les années futures. Le nouveau bureau démontre concrètement notre volonté d'ouvrir l'association ainsi que de la rendre plus transparente et professionnelle. La présentation d'un budget clair a aussi démontré notre vision d'une direction soutenue par une analyse approfondie de nos ressources. Toutes ces choses qui auparavant ne se faisaient pas devraient maintenant devenir une tradition au sein de notre faculté. De plus, le bilinguisme a pris une place grandissante au sein de notre association. L'agenda, qui a été imprimé plus d'un mois avant la date de sortie antérieure, était complètement bilingue. Je suis fier du travail de l'équipe du LSA. Les heures passées au bureau, au téléphone, dans les activités et à écrire des courriels, ont donné les résultats souhaités.

Heureusement, il y a aussi toujours place à amélioration au sein d'une as-



sociation. Une meilleure coordination entre les activités étudiantes et facultaires serait souhaitable. Un dialogue mieux structuré sur l'ensemble du travail du LSA entre l'exécutif et les étudiant(e)s, ainsi qu'une plus grande présence des professeur(e)s aux Cof-

feeHouses serait profitable pour tous. Nous travaillons sur toutes ces choses, ainsi que sur une panoplie de nouvelles activités pour la session à venir. J'ai bien hâte de vous revoir durant cette nouvelle année, je vous encourage tous à venir nous voir et nous faire part de vos

idées, et plus que tout, je vous souhaite une session remplie de succès!

For any ideas, questions, or concerns please feel free to contact me at: [president.lsa@mail.mcgill.ca](mailto:president.lsa@mail.mcgill.ca) or come by the LSA office.

### **Looking for a Job?**

Next week is Civil Law Careers Week at the Faculty. For this occasion, the Quid will publish a special issue on **January 19th, 2010.**

Si vous avez des histoires drôles ou des conseils à offrir à vos collègues sur la Course aux stages (même annodines), laissez-nous savoir!

### **Wanna Be Famous at the Fac?**

Please submit your articles before Thursday, January 14th, 2010 at 5PM to [quid.law@mcgill.ca](mailto:quid.law@mcgill.ca)



# Film Review: Sherlock Holmes (2009)

by Marie-Pier Leduc (Law III)

It has occurred to me recently that the Quid rarely, if ever, published Arts reviews for books, performances, films and other related things presented outside the Faculty. Therefore, I humbly suggest that we establish a weekly column where a student could present something he has particularly enjoyed reading/watching/doing – none of us has the time to run such a column every week, but if we make it a collective effort, I bet we'll end up discovering new, exciting things, or rediscovering them, while sharing our interests with our peers.

In that spirit, let me get the ball rolling: it is well-known among my friends that I am a movie maniac; I rent several films per week and actually celebrate the start of what I have dubbed «Oscar Season» (mid-November) and «Blockbuster Seasons» (end of May) with a similarly-inclined best friend. It is a little less well-known that I am a devoted Sherlock Holmes fan, having read every novel and every short story several times and owning various editions of all in three languages. I have even paid the outrageous entry fee to the Sherlock Holmes Museum in London where I spent an awestruck hour going over every detail of the apartments, to the amused dismay of my travel companion.

Needless to say, I had been awaiting the new Sherlock Holmes movie for over a year when it finally came out on Christmas Day. It's always a dangerous business, eagerly awaiting movies, and doubly so when we're talking about a book adaption, as the potential for disappointment is even higher than usual (fans of author Philip Pullman will understand). However, I am happy to say that Guy Ritchie managed to deliver an excellent film, true to the spirit of the character.

Sherlock Holmes and John Watson are respectively played by Robert Downey Jr. and Jude Law, and both men do an admirable job. Downey Jr. displays just

enough of the famous Holmes pride and petulance, and the jabs at the inferior capacities of long-suffering Inspector Lestrade of Scotland Yard are delivered efficiently. Law is remarkable as a soon-to-be-married Dr. Watson, trying to juggle his obligations to his fiancée, Mary Morstan (played by Kelly Reilly, *L'auberge espagnole*, *Pride and Prejudice*), his career, and his troublesome roommate. He clearly conveys the sort of affectionate exasperation towards Holmes that usually characterizes Watson's narrative of their adventures in Conan Doyle's work. The supporting cast also does a solid job, though the character of Irene Adler is a little over the top. All in all, Ritchie cannot be faulted on his casting.

The plot follows a classical Holmes narrative: after catching a serial killer, Holmes and Watson are brought back on the case when the murderer, Lord Blackstone, surprisingly resuscitates after his execution and continues to kill. The story incorporates elements of the supernatural not unknown to the Holmes universe (see *The Adventure of the Sussex Vampire*, *The Musgrave Ritual*) and presents a Sherlock Holmes closer to Doyle's character than that of previous adaptations. Ritchie's use of Holmes's mastery of disguise is clever and something I particularly appreciated. The decision not to proceed with a «beginning» story, but rather to situate the plot in the middle of Watson and Holmes' partnership was a sound one; the notoriety of the character allows for that, and it projects the audience right into the action. As a matter of fact, Ritchie's *Sherlock Holmes* contains very few slow moments. It strikes a good balance between action, character development and all-in-all excellent entertainment, and it is probably one of the best movies to come out during the holiday season (though I still have to see *Up in the Air*).

Now, if you're a moderate Sherlock fan like me (meaning that you've read and know the books, but still has to join a

Sherlock Holmes Society), two things might annoy you, as they annoyed me. Guy Ritchie did a fabulous job adapting Sherlock Holmes to the big screen; he claimed he wanted to go back to the original stories, and it shows in his work. That is why I find it hard to forgive the liberties he took with the future Mrs. Watson's background story. A subplot of the movie revolves around Holmes dealing with the fact that Watson is moving out of their shared rooms on Baker Street to marry Mary Morstan, and the audience is treated with scenes such as Holmes meeting Mary at a disastrous dinner, Holmes making Watson late to an appointment with his future in-laws, etc. I admit that it makes good comic relief; however, Mrs. Watson was a client of Holmes, who had consulted him following her father's death, and that is how she met Watson and eventually came to marry him. All the tension and comic relief of Watson leaving Holmes can still be found in Conan Doyle's stories without changing the original plot, and so I think Ritchie took an easy way out in that case.

The other annoying thing, although more insignificant, is Baker Street itself; or rather, the lodgings at 221B Baker Street. They look very luxurious in the movie, too much in fact for an apartment that was initially rented by two gentlemen out of money and career prospects. But perhaps I was just too much impressed by the actual 221B Baker Street, in London; so don't mind me on that point.

*Sherlock Holmes* plays at the Scotia Bank Theatre on Ste-Catherine.





# A New Semester at the CDO... and a New Friendly Face

The holiday season may have come and gone, but developments at the CDO are ongoing. The Winter Semester has a great deal in store for you!

Avant de se lancer dans la liste d'événements à venir, nous aimerions prendre un moment pour vous présenter la nouvelle coordinatrice, **Cynthia Alphonse**, qui remplacera Lianne Barski durant son congé de maternité. Cynthia se joint à l'équipe après avoir complété un Baccalauréat en Psychologie et Relations Humaines et travaillé pour Postes Canada comme coordinatrice de formation. Elle est une passionnée du voyage et a passé plusieurs mois en Chine à titre de bénévole. N'hésitez pas à passer au CDO pour lui poser des questions ou pour tout simplement vous présenter car elle a très hâte de rencontrer les étudiants de la faculté! Lianne sera parmi nous jusqu'au vendredi 22 janvier et Cynthia travaillera avec elle d'ici cette date. Nous espérons que vous vous joindrez à nous pour souhaiter la bienvenue à Cynthia et accueillir la nouvelle source de bonheur de Lianne!

As the New Year begins, it is once again time for the Faculty's Career Days. The CDO will distribute information about participants before the events via email. Here are the dates:

**Journée carrières de droit civil** –  
le mercredi 20 janvier

**Common Law Career Day** –  
Wednesday, January 27th

**Public Interest Career Day** –  
Wednesday, February 17th

These events are a great way to meet employers and explore your career options. You will also gain invaluable information that will help you prepare any upcoming applications. Representatives attend specifically to answer your questions and provide information about their firm or organization, so do not miss out on this opportunity to do your career homework.

A number of other events are lined up for this semester, including a session on "How to Network" with recruitment agency ZSA on January 18th, a work-

shop on the business of practicing law with alumnus J. Michael Nelson on February 2nd, and mock interviews with the *Association du Barreau canadien, Division Québec* on February 5th. Details will be sent out by the CDO via email.

La première séance d'information du CDO de 2010 aura lieu le **mercredi 13 janvier** dans la salle 200, de 13h00 à 14h00 – le thème cette fois-ci sera la **Course aux stages** à Montréal. Aisha, Lianne et Cynthia y seront pour vous parler des critères d'éligibilité, la préparation de votre candidature, ainsi que du processus d'application en ligne (*my-Future*) et des entrevues. Si vous pensez participer à la course cette année, c'est à ne pas manquer.

For information on all upcoming recruitment processes, including Montreal, Ottawa and London, visit [www.mcgill.ca/cdo](http://www.mcgill.ca/cdo), sign in and go to "Recruitment" in the left-hand menu. As always, do not hesitate to contact your CDO for help with your career-related questions.

## LEGAL FRONTIERS: MCGILL'S BLOG ON INTERNATIONAL LAW -- OFFICIAL LAUNCH ([www.legalfrontiers.ca](http://www.legalfrontiers.ca))

*because blogging just isn't the same without readers...*

*because back in the day when you first got an email from us, we talked about some kind of "scholarly, social network" or something...*

*because without you, there is no one to call out our absurd arguments ...*

### Mark your calendars!

Legal Frontiers goes live on MONDAY, JANUARY 18, 2010!

Legal Frontiers hosts the writing and ideas of 17 of your classmates. The blog seeks to expose readers to diverse legal perspectives on major international issues. We have spent the last semester setting up a blog in hopes that it could become a place where students can meet and interact with

others interested in international law. We cannot wait to share the blog with you and hope that you will read an entry or two and maybe even post a comment.

**Visit [www.legalfrontiers.ca](http://www.legalfrontiers.ca) on MONDAY, JANUARY 18, 2010 when we go public!**

**Legal Frontiers**  
[frontiers.mcgill@gmail.com](mailto:frontiers.mcgill@gmail.com)



2010

# Coffee House

## Schedule

<u>Date</u>	<u>Host</u>
January 14th	McMillan
January 21st	Blakes
January 28th	Ogilvy
February 4th	BLG
February 18th	Gowlings
March 4th	Admissions Board
March 18th	Bennett Jones
March 25th	McGill Law Alumni
March 11th, April 1st, April 8th	Dates free for Clubs wanting to Organize a Coffee House. Please contact Marlin LeBlanc Rivak, Vp Clubs and Services (vp-clubs.lsa@mail.mcgill.ca)





# Événements

## commandités à venir

Date	Événement
12 Janvier	Conférence Heenan Blaikie: Le processus décisionnel à la Cour Suprême – Présenté par le Juge Bastarache 17:30 au Moot Court
18 - 22 Janvier	Tombola iPod Gowlings: Courrez la chance de gagner un iPod touch en répondant à un court questionnaire au sujet de Gowlings. <small>Type to enter text</small>
5 Février	Diner et simulations d'entrevues avec l'Association du Barreau Canadien
8 Février	Date limite pour appliquer à la course aux stages
Mars	Skit Nite commandité par Blakes

2010

\* À noter: Ce calendrier n'inclut pas le calendrier des Collège House commandités [publié dans la même édition du Quid]. De plus, ce calendrier n'est pas définitif et les événements sont sujet à changement. L'AÉD n'est pas responsable des inconvénients causés par ces changements.





# Innocence McGill

by Mike Lockner (Law III)

Innocence McGill is recruiting, and if you're at all interested in criminal law, you should apply. To convince you, I'll tell you a bit about my own experience.

I joined Innocence two years ago with an interest in criminal law (born of a childhood spent watching *Law and Order* and *Columbo*) but no substantial knowledge of rules or procedure. It turned out not to have mattered: assigned to my first case I was playing detective more than lawyer.

There are two main parts to Innocence work: 1) Reviewing applications from people convicted of serious crimes; and 2) If there are grounds to question the conviction, putting together an application to the minister of justice. This means the bulk of our time is spent sifting through evidence – reading police reports, interviewing witnesses, diagramming events – rather than flipping through textbooks.

My first case at Innocence was admittedly a bit of a wash: a man charged with two crimes, for which the evidence for the second was thin to the point of non-existence. The evidence for the first, however, was strong – positive DNA match – and factual innocence seemed extremely unlikely. We did our due diligence and looked through the quality of the evidence, and the methods used by the lab. While I can't say I had the satisfaction of pursuing a right-

eous cause, it was fascinating to learn the mechanics of DNA evidence, and see how it has evolved, and where problems can arise. A learning experience, to be sure.

My second case, however, was a different story. Here the applicant was (in my opinion) clearly innocent, and the list of travesties of justice perpetrated against him long and disheartening. I can't share the facts with you (confidentiality, you understand), but rest assured they are pulp-novel worthy. Theft, murder, drugs, aliases, suspicious characters, seedy locales, questionable police work, you name it.

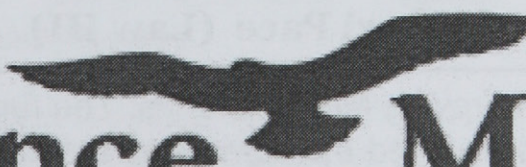
This case happened pre-*Stinchcombe*, which means before the crown had an obligation to disclose anything to the accused. So a lot of our work has been clawing back from the police the documents that should have been disclosed in the first place. It hasn't been easy: A simple request ballooned into a multi-year court battle against the city for access. A lot of my work on the file has thus been helping with this request, preparing our legal arguments for trial(s).

But I've also been working on the detective part as well. This means combing through the documents we *do* have to find inconsistencies and unanswered questions – and trying to put them together. Who was talking in the red car

outside the bar just before the murder? Why did X change his story, and only come forward years later? Who steals a truck full of meat?

Rooting through old documents, talking to (now) old witnesses, asking questions that many would prefer stayed unasked – this stuff is my favourite part of working for Innocence. Where else can you get a ground-level view of the criminal justice system – and of crimes themselves – while still in law school? How often do you get to shake hands with a convicted murderer who spent 25 years in jail on a bogus charge? Where else do you get to grapple with fundamental questions of innocence and guilt from a practical, actionable standpoint? Volunteering for Innocence has been the most important choice I made at law school – it's what has led me to choose a career in criminal law. It could do the same for you; though even if it doesn't, it's fascinating, important work.

So, as I said, Innocence McGill is recruiting: **applications** are due January 20th (send your cover letter to [innocence.law@mail.mcgill.ca](mailto:innocence.law@mail.mcgill.ca)) and there's an **info session** with our supervising lawyer on January 13th at 12:30 in room 316. If anything in the previous couple of paragraphs appealed to you, why not give it a shot?



Innocence McGill



# Not Rocket Surgery: Getting Involved

by Michael Shortt (Law I)

Today's welcome-back column of Not Rocket Surgery focuses on ways to get involved on campus and keep cabin fever at bay! After all, first years get a few less hours of class, so why not take advantage of the tiny respite?

1) Activities Night: The centrepiece of undergraduate extracurricular activities takes place once a semester, this time on January 20th from 4:00 to 9:00 pm. The 150 SSMU clubs and services, plus sports teams and more, will be vying for students' attention on all four floors of the Shatner building. Expect long line-ups outside unless you get there on time or earlier, and don't even bother after 7:30.

Once on the inside, you will face a kaleidoscopic variety of activities and organizations. These range from cultural associations (most nationalities are represented by a club of some kind) to charities (Amnesty, Habitat for Humanity, Make a Wish, etc.) to hobby-based groups such as the Trivia Club and Players' Theatre. It's worth making the full tour - both to get a sense of what's available, and to collect the free stuff that clubs offer as an incentive to stop at their tables!

Although I was tempted to promote the two groups of which I am a member (Walksafe and the McGill Scottish Highland Dancing Society), they're probably

not for everybody, so instead I'll mention McGill Swing Kids. If you have any interest in swing dancing then check them out, since they offer free lessons on a weekly basis for members and this is far cheaper than even a SSMU minicourse (see below).

2) PGSS Courses: Slightly more expensive than their undergraduate counterparts (see below), PGSS courses also tend to be higher quality. PGSS also offers a smaller number of classes, so I can list them all here: tango, salsa, public speaking, French conversation (beginner through advanced) and Vinyasa Yoga. Cost is 60\$-75\$ and schedule is once a week in the evenings for all classes except beginner's French, which runs either once a week for two hours at a time or twice a week in one hour sessions. Full details available at <http://pgss.mcgill.ca/COURSES/>. Registration runs until January 27th and courses begin the week of February 1st. Technically non-PGSS members (significant others, undergraduates and non-McGill friends) can only register if they are the "spouse" of a PGSS member, but that's interpreted very loosely - so if you claim to be dating someone, that's enough to allow registration!

I'd like to mention one course in particular that I had a great experience with last semester: Tango. The instructors were amazing, since they were both ex-

perienced dance instructors and competitive tango dancers. The pacing of the class was almost perfect; we learned a lot, yet at the same time we didn't move so fast that we forgot steps taught in previous weeks.

3) SSMU MiniCourses: The undergrad student society organizes a wide variety of entertaining and interesting courses every year. The three main types of courses are languages, dance and cooking, although there are plenty of others, such as guitar, knitting, pilates or speed reading. Cost is 45\$ dollars for most courses, 70\$ for cooking ones. Most courses run once a week for ten weeks in the evening, generally an hour and a half between 4:00 and 9:00 pm. Cooking is again an exception, with fewer but longer classes. "Workshop" style courses like speedreading are also different, so check out the schedule for details.

All the information you'll need about SSMU minicourses is available from [www.minicourses.ca/](http://www.minicourses.ca/) including a list of courses, signup location, times, etc. Registration runs from the 11th to 15th and 19th to 21st, although the second period has a five dollar late fee attached. Classes begin on the week of February first. Non-SSMU members (non-McGill friends and significant others, for example, pay 5\$ extra).

## (Un)Happy with the Library?

by Lexi Pace (Law III)

(Now that December exams are over, do you have any lingering grudges? Improvements to suggest for your beloved study space?

Each year undergraduate students at McGill, including law students, contribute \$8 per semester through the SSMU to a fund dedicating to

improving McGill libraries. The fund is matched by Alumni and amounts to around half a million dollars.

So what do you want us to do with it?

Send your comments to the Library Improvement Fund Committee at [ssmu.lifc@gmail.com](mailto:ssmu.lifc@gmail.com), or to me at [alexandra.pace@mail.mcgill.ca](mailto:alexandra.pace@mail.mcgill.ca).

Your Library Improvement Fund Coordinator, Lexi Pace



# Law School of Rock s'en vient!

by Comité Law School of Rock Committee

Ready to rock? Wish Law School were more like Star Academy? Now it's your time to shine!

Law School of Rock will be held this year on February 4th at Gert's on lower campus. We have the bar all to ourselves for a post-sponsored-coffeehouse evening of musical performances featuring your fellow McGill law students!

It's a fun evening for all, whether you're musically inclined, tone-deaf, or somewhere in between! Oh, that said, we're not liable if there's a few bad notes! Check facebook and notice board in the coming weeks for information about purchasing tickets - you don't want to miss out!

If you want to be involved, you can be

- EVEN IF YOU DON'T PLAY AN INSTRUMENT! For musical participation, contact Steven Jegou at [steven.jegou@mail.mcgill.ca](mailto:steven.jegou@mail.mcgill.ca). We have some equipment (check the Law School of Rock 2010 facebook group for pictures of what we have. If you want to be involved selling tickets, making programs or otherwise, contact the Skit Nite - Law School of Rock Committee at: [mcgillskitnite@gmail.com](mailto:mcgillskitnite@gmail.com).

For musical acts (groups or solos!): let us know what you have in mind for your performance (rock group, tuba solo, beatboxing) keeping in mind that time constraints will likely limit performances to three songs per act (you can play fewer if you'd like). We'll also want to hear every act to get an idea of who should play when (and to make sure there aren't 10 groups rocking out to

'Faithfully' by Journey (not that it's not a great song...)). Depending on submissions, some acts may not perform.

If you want to contribute musically, please let Steven Jegou ([steven.jegou@mail.mcgill.ca](mailto:steven.jegou@mail.mcgill.ca)) know by JANUARY 17th. If you want to be involved but haven't formed a group (i.e. I'm a drummer looking for a band, also let Steven know, we'll try to work out what we can, but please express your interest ASAP). Whatever you do, get practicing!

Here's hoping to see you at Law School of Rock - get your lighters ready!  
-Skit Nite - Law School of Rock Committee

**February 4th – 8pm – Law School of Rock @ Gerts**

**February 4th – 7:30 pm – Mariah Carey @ Centre Bell**

**Only one of those is worth the ticket price and will provide quality music.  
It's the first one.**

Law School of Rock aura lieu le 4 février au Gerts. Nous avons réservé le bar pour les étudiants de notre faculté. Venez nombreux après un CoffeeHouse commandité pour une soirée de concerts avec des formations de vos collègues de la faculté!

Ce sera une soirée pleine de surprises. Nous vous tiendrons informés sur Facebook et Notice Board dans les semaines à venir, notamment pour la vente de billets.

Si vous souhaitez nous donner un coup de main MEME SI VOUS NE VOULEZ PAS JOUER UN INSTRUMENT, contactez Steven Jegou: [steven.jegou@mail.mcgill.ca](mailto:steven.jegou@mail.mcgill.ca). Nous

avons du matériel (voir le groupe Facebook pour des photos de l'équipement disponible). Si vous voulez vendre des billets, participer au design et à la rédaction du programme ou autre, merci de bien vouloir contacter le Comité Skit Nite - Law School of Rock : [mcgillskitnite@gmail.com](mailto:mcgillskitnite@gmail.com).

Pour les prestations musicales (groupe ou solo), faites nous savoir ce que vous avez en tête (groupe rock, solo de trombone, beatboxing). Pour des raisons de temps, nous sommes obligés de limiter les prestations musicales à 3 morceaux maximum par groupe/personne. Nous aimerions vous entendre avant de vous inclure dans le programme.

Si vous désirez jouer ou chanter lors de l'événement, merci d'informer Steven Jegou [steven.jegou@mail.mcgill.ca](mailto:steven.jegou@mail.mcgill.ca) avant le 17 JANVIER. Si vous êtes à la recherche d'autres musiciens pour compléter un ensemble (ex: je joue de la batterie et je cherche quelqu'un qui joue de la guitare), veuillez informer Steven et on verra ce que l'on peut faire. Dans tous les cas, commencez à répéter au plus vite!!

Nous espérons vous voir tous au Law School of Rock – n'oubliez pas vos briquets!  
- Skit Nite - Law School of Rock Committee



# Truth Stranger than Fiction

Sometimes, you come across a case too juicy not to share. When this happens, you let The Quid know. For your reading pleasure, we present a most SCANDALOUS (and unreported) affair (in redacted form): *Phillips v. Irons* (2005 WL 4694579 (Ill.App. 1 Dist.))

*In a nutshell: a man and woman have only oral sex, but she saves the semen to impregnate herself. The man was clear he didn't want to have a baby with her, and was shocked to learn long after their breakup that she was indeed pregnant. She sued to establish paternity (which was established in a separate case, and the man is paying child support). Here is a separate suit the gentleman filed against the lady in question.*

## [Facts]

[Plaintiff] and defendant began dating in January of 1999, prior to which time defendant informed plaintiff that she was divorced, her prior marriage having occurred one year earlier, and it was a "terrible mistake." In a short period of time, plaintiff and defendant became engaged to be married. During their relationship, the parties discussed the possibility of having children only after they married.

Plaintiff informed defendant he did not wish to have children prior to marriage, and intended to use a condom if and when they engaged in sexual intercourse. Defendant understood and agreed. During the entire course of their relationship, the parties engaged in intimate sexual acts three times, with two of those times occurring on the same date. Vaginal penetration never occurred; the parties engaged only in acts of oral sex. Defendant told plaintiff she did not want to have sexual intercourse due to her menses. **On or**

**around February 19, 1999, and March 19, 1999, defendant "intentionally engaged in oral sex with [plaintiff] so that she could harvest [his] semen and artificially inseminate herself," and "did artificially inseminate herself."** [Emphasis added]

Plaintiff's complaint alleged further that in May of 1999, defendant confessed to plaintiff that she still was married to her former husband, Dr. Adebawale Adeleye. She told plaintiff she planned to get a divorce, and showed him a "Petition for Dissolution of Marriage," which was filed on May 20, 1999. In the petition, defendant swore she was not pregnant. The parties' relationship terminated in May of 1999, upon plaintiff learning defendant was not divorced.

*On November 21, 2000, defendant filed a "Petition to Establish Paternity and Other Relief" against plaintiff, claiming she and plaintiff had a sexual relationship eight to ten months before the birth of defendant's daughter, Serena, on December 1, 1999. DNA tests have confirmed plaintiff is Serena's biological father.*

**Plaintiff's complaint asserted he had no knowledge of defendant's pregnancy nor the birth of the child until receiving defendant's petition to establish paternity. (emphasis added)**

[...]

## [Complaint]

On May 23, 2003, plaintiff filed a three-count third amended complaint against defendant, seeking damages for (1) intentional infliction of emotional distress (IIED) (count I), (2) fraudulent misrepresentation (count II), and (3) conver-

sion (count III)

*[The Quid will omit parts I and II]*

## [Count III – Conversion]

Plaintiff argues last that the circuit court erred in dismissing count III of his complaint for conversion. He asserts that defendant committed the tort when she took his "semen, sperm, and genetic material without his permission, for the purpose of conceiving a child, purportedly within the bounds of her marriage to Adeleye."

*[From footnote] \*Conversion is an unauthorized act that deprives a person of his property permanently or for an indefinite time. In re Thebus, 108 Ill.2d 255, 259, 483 N.E.2d 1258 (1985). "It must be shown that the money claimed, or its equivalent, at all times belonged to [ ] plaintiff and that [ ] defendant converted it to his own use" Thebus, 108 Ill.2d at 261. The elements of a claim for conversion are: (1) plaintiff's right in the property; (2) plaintiff's right to immediate, absolute, and unconditional possession of the property; (3) defendant's unauthorized and wrongful assumption of control, dominion, or ownership over the property; and (4) plaintiff's demand for possession. Stathis v. Geldermann, Inc., 295 Ill.App.3d 844, 856, 692 N.E.2d 798 (1998).*

Defendant responds that where plaintiff did not loan or lease his sperm, where there was no agreement that the original deposit would be returned upon request, or where the transaction did not create a bailment, a claim for conversion cannot be sustained. She asserts that when plaintiff "delivered" his sperm to defendant it was a gift-an absolute and irrevocable transfer of title to property from a donor to donee. **Plaintiff's donative**



**intent was clear, she argues, "had he not-intended to deliver his sperm to [her], he would have used a condom and kept it and its contents."**[Emphasis added].

In this case, no set of facts could be proved under the pleadings that would entitle plaintiff to relief for conversion, as he cannot satisfy the requisite elements. Cases from other jurisdictions have recognized the existence of a "property right" in materials derived from the human body (see e.g. *Kurchener v. State Farm Fire and Casualty Co.*, 858 So.2d 1220

(Fla.Ct.App.2003); *Hecht v. Superior Court*, 16 Cal.App. 4th 836 (Cal.App.1993); *Moore v. Regents of University of California*, 51 Cal.3d 120 (Cal.1989); *York v. Jones*, 717 F.Supp. 421 (E.D.Va.1989)); however, plaintiff cannot show he had the "right to immediate, absolute, and unconditional possession" of his sperm. Plaintiff presumably intended, and he does not claim otherwise, that defendant discard his semen, not return it to him. "The essence of conversion is the wrongful deprivation of one who has a right to the immediate possession of the object unlawfully held." *Bender v. Consolidated*

*Mink Ranch, Inc.*, 110 Ill.App.3d 207, 213, 441 N.E.2d 1315 (1982). Plaintiff is unable to satisfy the second element needed to state a claim for conversion. In light of the foregoing, the third and fourth elements of conversion need not be addressed.

**THE QUID'S VERDICT: IF YOU DON'T WANT IT TO BE A GIFT, YOU'D BETTER KEEP IT WRAPPED UP!**

**Come across a crazy case? Let the Quid know!**  
**quid.law@mcgill.ca**

**There's some stuff on Westlaw too good to keep to yourself!**

## A Brilliant Idea

by Bascal Pouffard, et al. (Law II)

As the Winter semester begins—after a very short break—I am confronted once again with the dire truth: I love law school just as much as Tiger Woods loves his wife. Of course, I suspect I'm not the only one feeling that way. Perhaps law school just isn't meant to be fun. Perhaps it's meant to be an ordeal—one that you must survive and complete in order to earn your rightful place among the elite of society. Perhaps.

But why does it have to be so boring? I say it doesn't. So I've been thinking... what can turn a boring thing into an arousing one? Of course—we all know it—the answer is porn. And I don't mean Progressive Outer Retinal Necrosis. No, that sucks. It can make you blind, and I hear it's caused by herpes.

No, that's not the porn I'm talking about. I'm talking about the good porn: what we define as, say... the enactment of amatory sentiment. That's what's lacking here. There's no pornography in law school, and that's why it's all so boring.

So I had a brilliant idea. As we know, our faculty continually strives to be innovative in its teaching methods, and what's more progressive than implementing porn into our curriculum? Of course, it must all be in good taste—filtered and approved through the R. v. Butler analysis. Hence, I've gotten together with some collaborators (who will remain anonymous to protect their family-friendly reputation), and here are a few erotica titles that we found likely to appeal to the lawyer niche:

- Oral Arguments
- A Bare Promise
- Specific Performance
- Les nues-propriétaires
- Who's Your Bon Père de Famille?
- Full Disclosure
- SLAPP Me If You Want
- Jouissance Exclusive du Bien Corporel
- Personal Servitude
- Legally Bound

That should do it for now. I'm just throwing the idea out there, y'know—brainstorming. It would make law school more interesting. Just saying...





## PARTIES!!!

The Quid isn't sure what happened last semester, but there weren't enough law parties and the 1Ls earned a reputation of being "More lame than the last name of a Supreme Court of Canada Justice whose first name was Antonio". That scathing characterization came from a lame 3L who got an A for effort for that miss of a diss. Before we get too off topic here, let's just shorten it to the following:

1Ls: Step it up. 2Ls: Why did we stop? 3Ls: Okay, so you don't care anymore... but isn't that MORE of a reason to party? The Quid thinks so.

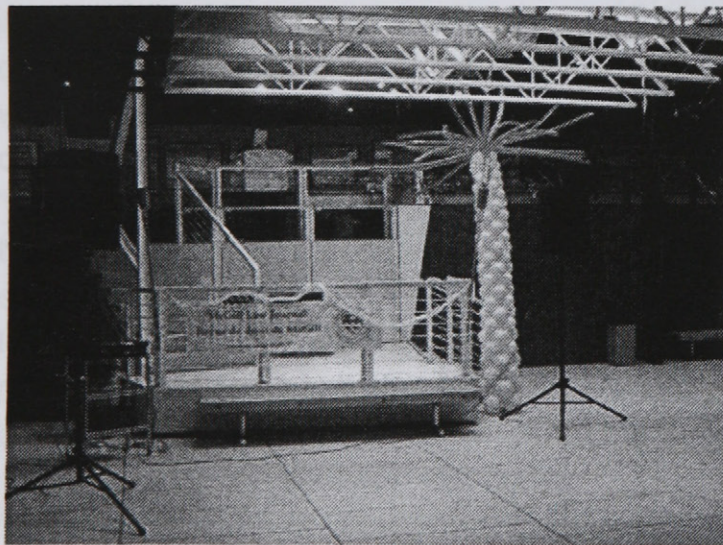
## OMG SHOES

The NYC trip is a weekend and change. Some of y'all packed like it was study abroad. Perhaps it's time for The Quid to start a 'Diva of the Week' award – but we all know our favourite diva (again, diva can be male or female) can be found at the SAO. The Quid will let your mind ponder that one.



## Coffeehouse!

Bon, c'était un bon début de la saison coffeehouse et le Quid a hâte de voir ce qu'il y aura dans les semaines à venir. On vous rappelle que les amis non-law (qui sont les bienvenus pour les coffeehouses non-commandités) ne sont pas les bienvenus pour les événements commandités. De plus, on a besoin de plus de musique francophone aux coffeehouses – le playlist ne devrait pas être 'anglos greatest hits'. Le Quid vous rappelle qu'il y existe plein d'autres artistes francophones autre que Céline Dion.



## Drama & Divas

The Quid is excited for the play - Goodnight Desdemona (Good Morning Juliet) - which will be presented in the lovely Moot Court from January 27th to 29th. Mark your calendars now for this spectacle - more dramatic than the facts of Palsgraf!! Really, the Quid is unsure of the legal aspect to this play, but we're sure if you go to bed as one thing and wake up as another, there's probably a tort involved somewhere... just sayin'





# Droit à l'Image

Charlie Feldman (Law II)

## ...DISONS...

### (Overheard at the Faculty)

Welcome back! The Quid hopes you had an enjoyable break ... it also hopes to hear from you if your Professor or classmate provides any quotable quotes: **Quid.charlie@gmail.com** – indicate either Prof name or student year. We reserve the right to edit, modify, translate, or ignore what you send comme toujours!

Well, well, it seems Disons has found a Prof in the Faculty who continues to cast pearls before.. well... us!

The following items are ALL from Prof. Klink:

"I'm finding the egg nog – especially with a little bit of rum – has an effect on the brain"

"Old folks like me like sins of avarice... you young people are more interested in the sins of the flesh as I understand..."

"I just want to warn you of what is coming – without really giving you any way to avoid it..." (draws on the board) "I'm a terrible artist but I have an inner frustrated Rembrandt"

"I'm an equity guy .... wait, I don't mean I'm particularly fair, just, or benevolent... just that I specialize in cml equity" (para-

phrased) "You can be a hard maker and still be a just and benevolent person... maybe my former students disagree"

"Love is not a thing. You don't take it off like a ring"

".... and then after my wife dug up the weeds and I was going after the roots, I FOUND THAT THERE WAS A COW CARCASS BURIED ON MY LAND!!!!!"

"I wanted to put a sign on her lawn - Chez Denise: DANSEUSE EXOTIQUE!"

"Everyone gets upset in litigation, but you have to get upset in the legally appropriate way!"

"Would anyone object to me selling my hair? Apart from the obvious reasons... okay, suppose I'm Rapunzel"

\*\*\*

Prof. Jukier: It's like my kids who have over 1000 friends on Facebook, and I'm like 'You can't possibly be liked by that many people!' .. And since when did 'Friending' become a verb?!

Prof. Jukier: Why can Mr. Borowski sue?! What is his interest? Is HE getting an abortion? \*pause\* Oh goodness, I can see myself in the Quid again...

Prof. Klink: Can you sell your blood in Canada? \*class discussion\* Can you sell it?

2L: In certain parts of town....

Prof. [Redacted] : "Don't get involved with lawyers, whatever you do"

2L: "Don't get involved with professors, that's from experience"

3L: Thank GOD it's almost over!!!

2L: I saw her yesterday – she smiled and waved.. then I remembered what I put in her course evaluation. I'm a terrible person – I'm going to hell.

2L: Norms are like wearing clothes. Everybody does it, but when you don't... it's a little awkward!

2L: I had sex with Tiger Woods.

2L: Virginie – Ce n'est plus la même Virginie – on l'a changé pis la série continue – c'est terrible!

1L: I keep asking everyone how their break was and then telling them about mine – I feel like I've had the same conversation a zillion times now – I'm just going to start making stuff up now to keep it interesting.

Judge Judy: "Facebook and Twitter are just playgrounds for the mischievous"

Website Shout-out: <http://www.fantasyscotus.net/>

Well, well, well, there is a bigger nerd than you! This site allows you to live out that fantasy of being the 10th justice on the US Supreme Court and predicting the outcome of cases that come before that nation's highest court. A to the mazing! The Quid is working on the Canadian counterpart – stay tuned!



# What's new in the Atrium?

## The "Hats Off!" Photo and Testimonial Project 2009

by Lainie Basman, Hana Boye, Oline Twiss (LAW IV)

As students of law, we have much to look forward to. Indeed it is easy to overlook the fact that our entry into—and our ability to shape—the legal profession has already begun. The twin photos, newly hanging in the lower court of the Atrium, reflect a dynamic culture at the Faculty, one that presents multiple opportunities for us to start shaping legal learning and the legal profession now.

The Hats Off! Photo and Testimonial Project was carried out in the winter semester of 2009 by a group of more than 30 women at the McGill Faculty of Law. These women flurried through the Montreal winter in search of bowler hats, old jackets, and faux mustaches with a mind to gathering on the outside steps of the (now former) law building at 3661 Peel Street for a photo "retake" of another photo hanging on the walls of the Faculty. On the day of the shoot, everyone was rushing to and from classes and meetings. Someone forgot a tie, someone else a mustache, another a coat; creative alternatives were offered and all managed to converge for 10 minutes in February to become a part of the snapshot that now hangs in the lower court of the atrium.

The photo reproduces one of the many older photos hanging on the walls of McGill, taken of a group of male students in 1905. Any of the photos on the walls of the Faculty might have been chosen for the project, as each one has a part in simultaneously documenting, inventing and transforming the culture of "the law". But it was this photo that happened to be hanging beside us in our criminal law class when the burning desire to look at an image of students with whom we could identify unleashed our imaginations (and study procrastinations).

Hats Off! aims to recognize the work done to date to facilitate women's entry into McGill's Faculty of Law, and the legal profession in general, while cap-

turing both the successes and challenges that we continue to face. The photo is accompanied by a collection of the participants' unedited reflections on this theme. Additionally, much discussion went into the image itself—do the faces reflect the present-day student body? Is it an "over" or "under" representative group? Is focusing on women too narrow, or is there something more to be said on women at the Faculty and in the legal profession? The idea of removing one's hat captures the double entendre of respect for those who have worked hard to bring women into the legal profession (a tip 'o the hat) and a forward-looking sentiment to a time when women can shed the symbolic hat, tie, or mustache in favour of their own professional flairs. We hope that Hats Off! invites broader dialogues about women and the law at the Faculty, and more importantly, encourages faculty and students to use creative ways to engage one another on topics that may otherwise remain unaddressed. We are, after all, shaping this profession as we go.

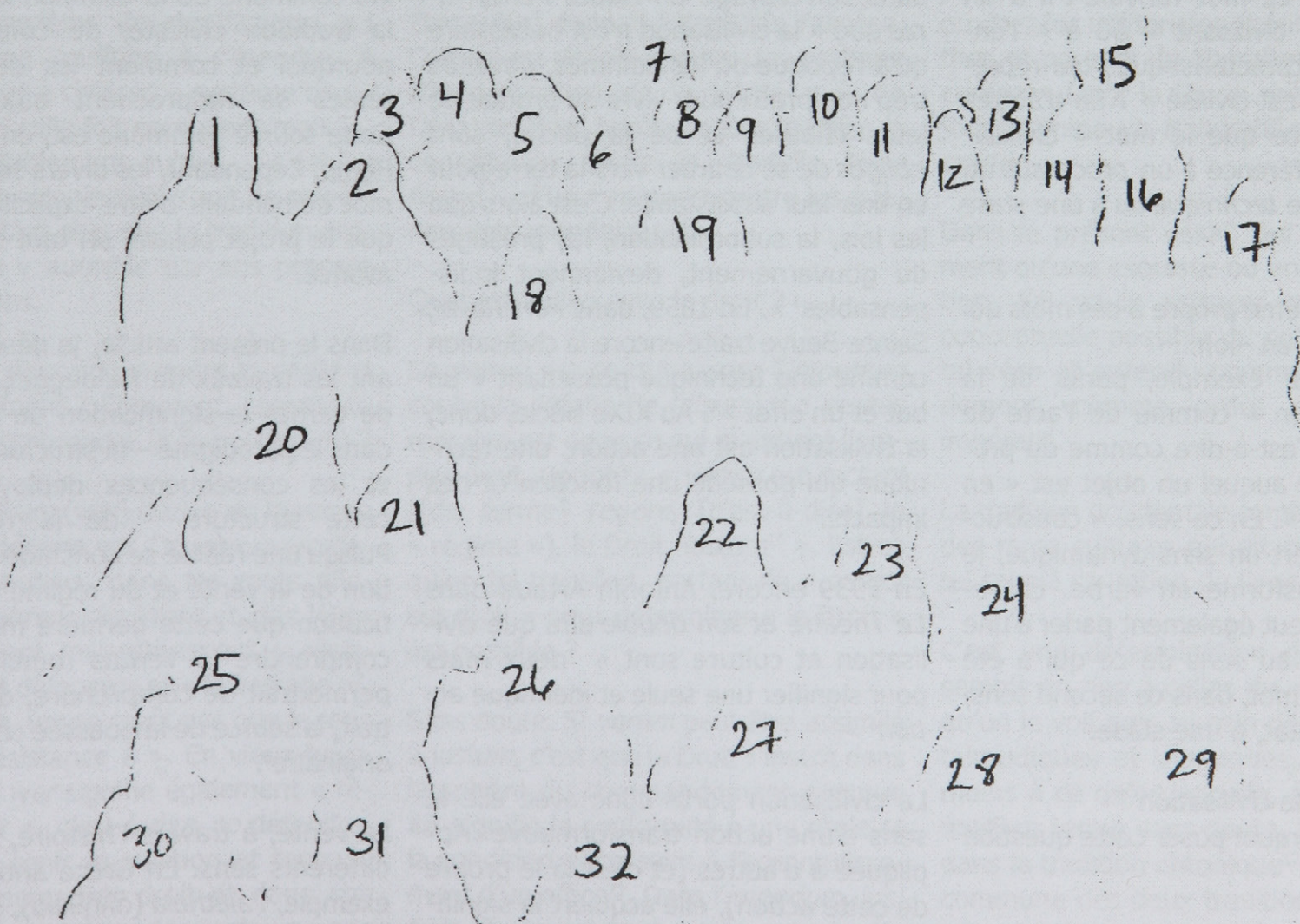
Props to all of the women who shared in the sentiment of the project enough to be in the photo—each listed below alongside the photo—and who brought fun and feistiness to this project and to the Faculty in ways we won't forget. We'd also like to send our warmest appreciations to all of the professors who joined us in presenting the Hats Off! photo and testimonials as a gift to the faculty: Professors Adelle Blackett, Angela Campbell, Jaye Ellis, Rosalie Jukier, Alana Klein and Margaret Somerville for joining us and generously sharing their stories and insights about what it was like to be students at the faculty and the kinds of changes that they have seen take place since; Professor Roderick Macdonald for putting the photos on the walls to begin with in a manner that inspired us to engage; and former Dean Nicholas Kasirer for accepting the photo and testimonials gift on behalf of the faculty and for being thoughtful enough

to ask where we thought it best placed. We are grateful as well to Cameron Esler for taking the photo (and for not falling off the ladder), and the Human Rights Working Group for assisting with some of the costs of framing the photo.

And last but not least, here's to all of the women at the faculty, now and in the future, who can see themselves in the Hats Off! photo—and to those who don't but nevertheless find other ways to inspire us to reflect on, and inch a little closer to, what it ought to mean to be a part of life and the law.

1. Meagan Johnston
2. Lissa Greenspoon
3. Noelle Sorbara
4. Oline Twiss
5. Joyce Tam
6. Lindsay Cheong
7. Nelly Marcoux
8. Maha Hussain
9. Maddalena Fuller
10. Ana Gray Richardson-Bachand
11. Megan Howatt
12. Katrina Peddle
13. Efrat Shemesh
14. Karen Crawley
15. Bhreagh Dabbs
16. Rachel Doran,
17. Hana Boye
18. Émilie Forgues-Bundoch
19. Dina Awad
20. Aubrey Charette
21. Anja Kortenaar
22. Palma Paciocco
23. Eva Warden
24. Mae Jane Nam
25. Iris Simixhiu
26. Tara Santini
27. Sarah Goldbaum
28. Roma Honoré
29. Lainie Basman
30. Yeniva Massaquoi
31. Patricia Day
32. Jennifer Klinck







# La vérité de la civilisation

by Marc James (Law I)

*Le présent article fait partie d'une série de réflexions sur la notion de « law as command ». Ce trait capital du droit occidental, s'il est, avec raison, très débattu, reste cependant une caractéristique essentielle et incontournable des deux traditions principales de l'Occident. En ce sens, « law as command » est propre au droit civil et à la common law de façon unique, c'est-à-dire d'une manière que l'on ne retrouve au sein du « droit » d'aucune autre culture juridique (je pense ici aux traditions chtonique, talmudique et islamique). Dans le présent essai, j'ai voulu voir dans quelle mesure il est possible de retracer l'origine du « law as command » à ses sources dans la romanité.*

## La vérité de la civilisation

Qu'est-ce que la civilisation ?

Je pose cette question en me référant strictement au terme lui-même et à l'espace de signification qu'il déploie. La « civilisation » ; ce mot renvoie-t-il à un « processus civilisant » ou à « l'ensemble des caractéristiques qui représente ce qui est civilisé » ? En d'autres termes, est-ce que le mot « civilisation » fait référence à un *processus* ou un *état*, à une *technique* ou à une *stase* ?

C'est le problème propre à ces mots qui se terminent en -ion...

On peut, par exemple, parler de la « construction » comme de l'acte de construire, c'est-à-dire comme du processus grâce auquel un objet est « en construction ». En ce sens, « construction » acquiert un sens dynamique; le nom se transforme en verbe. En revanche, on peut également parler d'une construction au sens de ce qui a été construit. Le mot, dans ce second sens, réfère à un état, à une stase.

Qu'en est-il de civilisation ?

D'abord, pourquoi poser cette question ?!

Parce que si la civilisation réfère à un processus, elle représente donc une ac-

tion, c'est-à-dire une technique qui a pour fonction de faire passer le non-civilisé (le barbare) à un nouvel état qui n'est pas originellement le sien. Une telle transformation requiert un investissement de force (fourni par le « civilisateur ») qui ne peut être vécu que comme une contrainte de la part de celui qui, souvent malgré lui, « se voit civilisé ».

Avant d'avancer plus loin, réglons l'hypothèse en indiquant que ce sens, c'est-à-dire celui d'une action contraignante (et non pas celui d'un ensemble de caractéristiques propres à la vie civile), est le sens premier du terme « civilisation ».

Mirabeau y réfère en 1757 lorsqu'il indique dans *Ami des Hommes* que la civilisation est « *ce qui rend les individus plus sociables*<sup>1</sup> ». En 1760, dans sa *Théorie de l'impôt*, il traite également de la civilisation comme d'un « processus »<sup>2</sup>. En 1801, Crèvecoeur indique dans son *Voyage en Haute Pensylvanie* que « la civilisation n'est nécessaire qu'à l'époque où les hommes, devenus trop nombreux pour vivre du produit de leurs chasses et de la pêche, sont obligés de se courber vers la terre pour en tirer leur subsistance. C'est alors que les lois, la subordination, les prestiges du gouvernement, deviennent indispensables »<sup>3</sup>. En 1859, dans *Port-Royal*, Sainte-Beuve traite encore la civilisation comme une technique possédant « un but et un effet »<sup>4</sup>. Au XIXe siècle, donc, la civilisation est une action, une technique qui possède une fonction et des impacts.

En 1939 encore, Antonin Artaud dans *Le Théâtre et son double* dira que civilisation et culture sont « deux mots pour signifier une seule et identique action »<sup>5</sup>.

La civilisation porte donc avec elle le sens d'une action transformative. Appliquée à d'autres (et c'est là le propre de cette action), elle acquiert la signification d'une conquête et d'un *dominium*. Le Code civil, en ce sens, ne

réfère pas à un état ou à une stase, mais à une technique et à une production. C'est dire que le Code civil n'est pas le pinacle d'un certain état de fait. Plutôt, il représente à la fois le fruit et l'outil d'un processus civilisateur. Le Code trouve son origine dans une volonté sous-jacente de civilisation. Il en représente ensuite une arme.

*Non pas tant un Code civil qu'un Code civilisant.*

Aussi n'est-ce pas surprenant que la tradition civiliste se prévale de son origine romaine, Rome étant le premier Empire conquérant, c'est-à-dire civilisateur.

Il y a un projet dans les paragraphes précédents. Cependant, ce serait excessivement prétentieux de ma part d'essayer, à ce stade-ci, de le définir. La question de la « civilisation » dans ses rapports au système civiliste m'intéresse énormément. Aussi, je crois qu'il est possible, en partant de l'origine commune de la *common law* et de la tradition civiliste, de comprendre pourquoi et comment les deux systèmes se rapprochent aujourd'hui. Cette source commune est, en un mot, Rome. Cependant, les divers sens de ce mot demandent d'être explicités avant que le projet puisse, un tant soit peu, avancer.

Dans le présent article, je désire, suivant les travaux de Heidegger, essayer de cerner la signification de la vérité dans le paradigme – la structure propre et les conséquences déployées par cette structure – de la romanité. Puisqu'une réalité se constitue en fonction de la vérité et du régime de signification que cette dernière manifeste, comprendre la *veritas* romaine nous permettrait de comprendre, du même trait, la source de la poussée civilisatrice originaire<sup>6</sup>.

La vérité, à travers l'histoire, a revêtu différents sens. En Grèce antique, par exemple, l'*alêtheia* (ἀλήθεια), structure négative de *lêthes* (voile), représente la vérité comme « dé-voilement ». La



vérité est ce qui s'offre à nous pour ensuite se retirer derrière son voile (l'apparatif renvoie à la structure adversative de la vérité). À Rome, la vérité s'entend comme *veritas*, terme sur lequel nous reviendrons dès le prochain paragraphe. Avec le christianisme, la vérité correspond à un « se régler sur » (d'abord sur la volonté divine et éventuellement sur le monde, justifié par cette même volonté divine). C'est ce qu'on retrouve chez Thomas d'Aquin (influence aussi énorme que méconnue de la tradition civiliste) lorsque celui-ci définit le vrai comme « *adæquatio intellectus et rei [est]* ». C'est dans la tradition chrétienne, et plus précisément avec Descartes (philosophe chrétien de son propre aveu) que l'essence de la vérité est transférée à la *ratio* humaine. La vérité comme adéquation de l'intellect et de la chose s'entend, à partir de Descartes, comme *certum*. C'est ainsi que prend naissance la science moderne : la vérité, c'est l'évidence, le fait.

Revenons à la signification de la vérité romaine. C'est celle-ci qui nous intéresse dès lors que c'est dans la romanité que l'Occident contemporain puise, et sa structure expansive, et son droit. En ce sens, si l'on veut retrouver l'origine du système de signification qui pousse une tradition à s'étendre, à conquérir et à civiliser, – système de signification mille fois recouvert, mais jamais véritablement oublié –, c'est au paradigme romain qu'il s'agit de retourner... d'autant plus que la tradition civiliste nous y autorise par ses propres exhortations.

Comment donc comprendre la *vérité* et le *vrai* à Rome ? Comment, coextensivement, comprendre le faux (*falsum*) ?

Le latin *verum* (vrai) dérive de la racine indo-européenne *ver*. On retrouve celle-ci, entre autres, dans les mots allemands *wehren*, *die Wehr* et *das Wehr* qui signifient respectivement « résister à », « la défense » et « le barrage »<sup>7</sup>. Cependant, *ver* ne revêt pas que le sens d'une « résistance à ». En vieux-haut-allemand, *wer* signifie également « résister pour », c'est-à-dire *se défendre*, *s'affirmer*, tenir *la* position et tenir *sa* position, demeurer droit et dans *son* droit, bref « commander » et « ne pas tomber ». Cette signification est

d'ailleurs confirmée par l'adverse de *verum*, à savoir *falsum* (faux). *Falsum*, participe de *fallere*, est apparenté au grec *sphallo* (σφάλλω) qui signifie faire tomber à la lutte, faire échouer et chuter. À la lumière du paradigme romain, le *falsum* représente donc le faux au sens de « ce qui fait tomber », de « ce qui fait choir », de « ce qui mène à l'effondrement ».

On est donc justifié de dire, comme Heidegger avant nous, que « le domaine essentiel qui fait autorité pour le déploiement du *falsum* romain [nous pouvons désormais y rajouter le *verum*] est celui de l'*imperium*, de l'impérial<sup>8</sup> ». Comparé à la vérité grecque (l'*aletheia*, le dé-voilement), le *verum* romain représente une militarisation de la signification du vrai. On passe de ce qui dévoile à ce qui résiste.

Dès lors que le *verum* (barrage, défense, résistance) s'oppose au *falsum* au sein du domaine de l'*imperium*, il ne peut manquer de représenter ce qui protège et ce qui assure. C'est d'ailleurs le sens que la philosophie stoïcienne romaine (au travers de ses représentants : Sénèque et, surtout, Marc Aurèle qui, faut-il le rappeler, était également Empereur) donnait à l'*askêsis*, l'ascèse. Celle-ci est définie comme une pratique d'incorporation de la vérité qui, de l'aveu de Marc Aurèle, a pour fonction la constitution d'une « citadelle intérieure », d'un « rempart contre les événements mondains »<sup>9</sup>.

Quel est le lien avec le droit ?

Le *verum* est ce qui assure l'*imperium* contre la défaite (le *falsum*). La *veritas* romaine est donc ce qui maintient l'empire droit, upright : « *verum est rectum* ([du terme] *regere*, [c'est-à-dire] le « régime »), le Droit, *iustum*<sup>10</sup> ». Est-ce qu'un tel transfert, partant de « ce qui est droit » pour déterminer « le Droit » est possible ?

Sans doute. Si *verum* peut être assimilé à *iustum*, c'est que le Droit s'inscrit dans la sphère du commandement puisque *ius* signifie la conformité à une règle et la condition nécessaire à l'accomplissement d'un office<sup>11</sup>. Dans l'*imperium*, *ius-tum* et *verum* sont synonymiques du moment que les deux prennent le sens

du barrage qui assure la défense. Le *verum* est cependant inoffensif, sans défense, purement conceptuel. Le *ius* est son arme.

*Veritas est rectitudo*, c'est-à-dire la « rectitude »; en Allemand : *Richtigkeit*. En Allemand toujours, le *Recht* est le convenable, *Rechtfertigung*, la justification, *rechtmäßig*, ce qui est légal, et bien sûr *Reich*, l'Empire. Tous proviennent de la même source, du *recht*, du *right*, du *droit*, c'est-à-dire de la vérité armée. On retrouve également cette racine dans le français « correct (correct) », signifiant encore l'adéquation à la règle.

Il n'est désormais pas étonnant que, de part et d'autre de la Manche, le Droit porte encore avec lui le sens d'un *commandement*. Effectivement, les deux traditions ont pour source commune Rome, paradigme au sein duquel le Droit est à la fois le bras armé et l'objectif du vrai. Il n'est pas plus étonnant que de part et d'autre du *spectrum* « philosophique » occidental, le droit se traduise en commandement. En effet, que l'on cherche chez Kant (héritier de Thomas d'Aquin, Grotius et Descartes, parent de la pensée civiliste moderne) ou chez les utilitaristes (héritiers de Luther, et parents du libéralisme et de la *common law*), la loi se présente toujours comme un *impératif* ou un *command*.

Dans le présent essai, qui n'est vraiment qu'une esquisse ou une introduction, j'ai voulu retracer une source conceptuelle possible du droit occidental vécu et entendu comme commandement, comme ordre et comme impératif.

La tradition occidentale semble être une des rares cultures qui ait consacré un tel sens à sa notion de Droit.

C'est une détermination qui ne ressemble en rien à celles du « droit » tel qu'on le voit agir au sein des traditions talmudiques et islamiques, et encore moins à ce qu'on appelle, à défaut de meilleur terme sans doute, le « droit » dans la tradition chtonique<sup>12</sup>. La source commune des deux traditions occidentales contemporaines m'a semblé être un endroit idéal pour entamer des re-



cherches, et celles-ci ne m'ont pas déçu. Il appert effectivement que la vérité, dans son sens romain, *si* différente de son sens grec (voir même l'inverse !) est l'étape première, ou du moins une des premières étapes, dans la transformation de la vérité en commandement, c'est-à-dire en technique de conquête, en militarisation, voire, en un mot, de civilisation.

Comme toujours, toutes critiques sont les bienvenues.

1. Mirabeau, Ami des Hommes cité par Émile Benveniste dans le Vocabulaire des institutions indo-européennes, p. 48. Mes italiques.
2. Mirabeau, Théorie de l'impôt cité ibid., p. 49
3. Crèvecoeur, Voyage dans la Haute Pensylvanie, t. 2, 1801, p. 210. Mes italiques.
4. Sainte-Beuve, Port-Royal, t. 5, 1859, p. 235. Mes italiques.

5. Artaud, Le Théâtre et son double, 1939, p. 12.

6. En Occident, s'entend. Il y a eu d'autres cultures expansives, à savoir les Perses, les Mongoles, les Ottomans et j'en passe. Cependant, en ce qui a trait à nos traditions juridiques, il me semble que, se fiant aux aveux du droit civiliste et de la common law, l'on puisse s'en tenir (du moins pour le présent essai) à leur origine romaine.

7. Il est intéressant de noter qu'en ce sens, les Romains ont entièrement retourné le sens de la vérité grecque. Si l'« alêtheia » (ἀλήθεια) représentait ce qui se dévoile et « lêthes » ce qui reste voilé, le verum romain, en revanche, représente ce qui barre, ce qui bloque, ce qui défend (l'accès à), bref : ce qui voile.

8. Heidegger, Parménides, G.A., Bd. 54, p. 58.

9. Pierre Hadot, dans La citadelle intérieure (1992) et Exercices spirituels et philosophie antique (2003) démontre que la théorie de la connaissance, la physique et l'éthique stoïcienne ont toutes trois pour fonction la constitution du soi comme citadelle, comme défense contre les imprévus.

10. Heidegger, Parménides, op. cit., p. 71.

11. Émile Benveniste, Le vocabulaire des institutions indo-européennes, t. 2, p. 111 sq.

12. En 1861, Henry Sumner Maine nous disait déjà qu'« it is most difficult for a citizen of western Europe to bring thoroughly home to himself the truth that the civilisation which surrounds him is a rare exception in the history of the world ». Ancient Law, Chapter 2, Nu Vision Publications, 2009, p. 19.

### Extrait du Loup des Steppes de Hermann Hess ou Réflexions sur la vitalité ou Réflexions sur la différence

En résumé, il (le bourgeois) essaie de trouver sa place entre les extrêmes, dans une zone médiane, tempérée et saine où n'éclatent ni tempêtes ni orages violents. Et il y parvient, même s'il renonce pour cela à l'intensité existentielle et affective que procure une vie axée sur l'absolu et l'extrême. On ne peut vivre intensément qu'aux dépens de soi-même. Or, pour le bourgeois, rien n'est plus précieux que le moi (un moi dont le degré de développement est en vérité rudimentaire). Ainsi, assure-t-il sa préservation et sa sécurité au détriment de la ferveur. Il rejette la passion du divin au profit d'une parfaite tranquillité morale; rejette le désir au profit d'un sentiment de bien-être; la liberté au profit du confort; une ardeur fatale au profit d'une température agréable. Le bourgeois apparaît ainsi par sa nature même comme un être sans grande vitalité, angoissé, craignant toute forme de renoncement à soi et facile à gouverner. Voilà pourquoi il a substitué le principe de majorité à celui du pouvoir concentré, la loi à la force, le vote à la responsabilité individuelle.

Il est clair que des personnes aussi faibles et anxieuses ne peuvent se maintenir longtemps en vie, même si elles sont encore fortement représentées. Leurs particularités les rendent incapables de jouer un autre rôle que celui du troupeau de brebis égaré parmi des loups vagabondant en toute liberté. Cependant, dans les périodes où des natures très fortes détiennent le pouvoir, nous constatons que les bourgeois sont certes les premiers à être éliminés, mais qu'ils ne disparaissent jamais complètement; ils semblent même parfois être les véritables maîtres du monde. Comment cela est-il possible ? Ni leur nombre, ni leur vertu, ni leur bon sens, ni leur instinct d'organisation ne sont assez grands pour les sauver de leur perte. Par ailleurs, aucune médecine au monde ne peut maintenir en vie des personnes dont la force vitale est aussi faible dès le départ. Or malgré cela, la bourgeoisie existe, se montre puissante et prospère. Pourquoi ?

La réponse est la suivante: c'est à cause des Loups des steppes. En effet, la force vitale de la bourgeoisie ne repose aucunement sur les particularités de ses membres normaux, mais sur celles des outsiders extraordinairement nombreux qu'elle est capable d'englober, grâce à l'imprécision et à l'élasticité de ses

idéaux. On trouve toujours parmi les bourgeois une foule importante de natures fortes et indomptées. Harry, notre Loup des steppes, en était un exemple caractéristique. Il s'était développé en tant qu'individu à un degré dépassant de loin les possibilités du bourgeois. Il connaissait le plaisir profond de la méditation, tout comme les joies sombres de la gêne d'autrui et de soi-même. Il méprisait la loi, la vertu et le bon sens. Et pourtant, il demeurait prisonnier de la bourgeoisie, incapable de lui échapper. Ainsi, de vastes couches d'humanité s'accumulent-elles autour de la véritable masse que forme la bourgeoisie authentique; des milliers d'existences et d'intelligences qui se situent au-delà du niveau d'évolution bourgeois et qui auraient normalement pour vocation de se consacrer à l'absolu. Chacun de ces êtres reste attaché par des sentiments infantiles au monde bourgeois; se voit contaminé partiellement par sa mollesse; s'obstine d'une certaine manière à vivre parmi ses membres; continue d'une certaine manière à être l'esclave, l'obligé, le serviteur de ceux-ci. Car c'est l'inverse du principe des Grands Hommes qui prévaut aux yeux de la bourgeoisie: celui qui n'est pas contre elle est pour elle !



*continued from p.2*

former stardom (please don't judge my beach reading material...okay, fine, judge it).

Now, for those of you who are concerned that I am about to recommend that mankind should once again be ruled by the 14 deities of Greece's highest mountain, you can jettison your fears for this is not my intent. Rather, my intent is to get people thinking about who has come to epitomize our modern-day wundergods. Unsurprisingly, the word 'hero' is Greek in origin. It means 'person distinguished for courage, fortitude or deeds.' This definition easily lends itself to the sporting hero, an individual traditionally perceived as embodying social ideals and skills learnt on the playing field that can readily be transferred into daily life. Growing media intrusion, however, has come to represent the contemporary sports star as a 'damaged hero'—the *sport celebrity as representative of Ambien* induced lasciviousness (feel free to insert Tiger Woods into 'hero' of 'damaged hero').

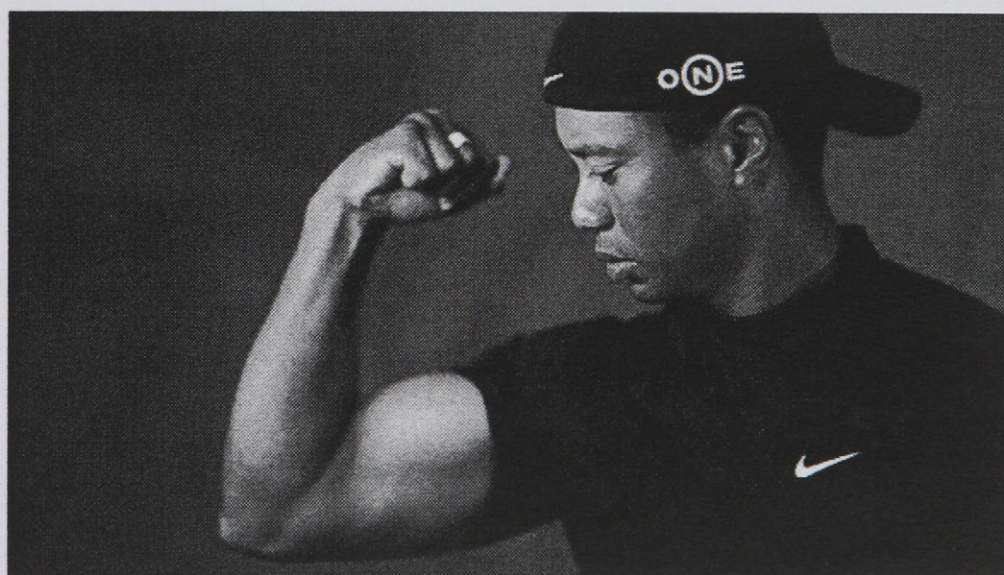
Jane Summer and Melissa Johnson Morgan argue in their article, "More than just the media," that the expectations of sporting fans are not simply

based on the notion of hero worship and role models. Winning or being successful, living wholesomely or focusing intimately on your chosen sport, is not enough to quench the needs of the modern sports fan. In fact, sporting celebrities with these attributes are often considered boring or uninteresting by their followers:

You can't really call them sporting celebrities if they don't occasionally do something outrageous or at least interesting. I mean look at Roger Federer he looks like a really nice guy and he certainly plays great tennis, and he's cute, but [yawn] he seems a bit boring really!"

By viewing sport celebrities as God-like, we generally measure them against unrealistic standards that they did not sign up for. The more God-like the celebrity, the more likely it seems that they will exemplify behavior ranging from "general laddishness" to drunken escapades, domestic violence, infidelity, animal abuse and drug abuse. The problem, however, may rest with us worshippers: rather than ascribing divinity on undeserving mortals, we should reconsider what makes a personality worthy of the privileged label of 'hero'.

1. Gill Lines, "Villains, fools or heroes? Sports stars as role models for young people" (2001) 20:4 Leisure Studies 285 at 287.
2. *Ibid.* at 285.
3. Respondent Internet Blog, as cited in Jane Summers & Melissa Johnson Morgan, "More than just the media: Considering the role of public relations in the creation of sporting celebrity and the management of fan expectations," (2008) 34 Public Relations Review 176 at 180.
4. *Ibid.* at 179.













Stikeman Elliott

invites McGill law students to our open house event...



# OPEN doors

Tuesday, January 12, 2010

4:00 p.m. – 8:00 p.m.

Stikeman Elliott  
1155 René-Lévesque Blvd. West, 40<sup>th</sup> floor  
Montréal, QC

## Tour...

- Visit our newly renovated office facilities, including our state-of-the-art Lawyer's Lounge.
- Meet our lawyers, students and stagiaires in their offices and see first hand what makes our culture and environment so special.

## Learn...

- Attend a great presentation by the unique Erik Richer LaFlèche and get an insider's view on Project Financing.
- Find out more about our exciting and cutting edge business law practice and the kinds of matters you would be involved in as a student and a stagiaire at Stikeman Elliott.

## Meet...

- Mingle with a cross section of our lawyers, students and stagiaires from our different groups of practice during a casual cocktail.
- Find out about the robust training program that is designed to help you succeed, including our extensive support resources and mentoring programming.

If you would like to attend, please email Josée Beauclair, our Student Programs Assistant, at [jbeauclair@stikeman.com](mailto:jbeauclair@stikeman.com) and include your name and e-mail address.